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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,678	09/29/2003	Ronald S. Deichmann	WW-11	5009

7590 07/12/2005  
Henry W. Cummings  
3313 W. Adams St.  
St. Charles, MO 63301

EXAMINER
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HOGAN, JAMES SEAN

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/674,678	<b>Applicant(s)</b> DEICHMANN ET AL.	
	<b>Examiner</b> James S. Hogan	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 12-14, 18, 21, 26-31, 33 and 34 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 5-11, 15-17, 19, 20, 22-25, 32, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 8, 9, 12, 15, 18, 19, 22, 24, 29, 31, 32 and 33 are objected to because of the following informalities: multiple misspelled words, the absence of spacing between words and missing necessary punctuation are found in numerous places in the above claims. Appropriate correction is required.
2. Claim 7 is objected to because of the following informalities: The term "and whereby the laminar stream emanating from said laminar nozzle forms a graceful arch and then falls back into the reservoir" is listed in lines 7-8 of the claim and then unnecessarily repeated in lines 22-23 of the claim. Appropriate correction is required.
3. Claim 30 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 30 repeats lines 3-8 of line 29 without any additional limiting claim material

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 4 recites the limitation "said diffuser" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

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6. Claim 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 11-19, the functionality of the armature tip is discussed. To quote:

said armature tip positioned in close proximity to said electromagnets such that in one position said armature stays positioned whenever said first electromagnet remains activated, and said shutter continues to block said exit port and no water is discharged; and whereby by de-activating said first electromagnet and activating said second electromagnet, said armature is made to rotate said shaft and said shutter will rotate so that it is no longer blocking said exit orifice, and said stream will traverse through said exit aperture, and whereby in order to stop the flow said **first** electromagnet is deenergized (sic.) and said **second** electromagnet is energized to move the armature in the direction to return said armature and said shutter to said first position.

7. Note the words in bold in the above paragraph. As the functionality of the movement of the armature is discussed, re-energizing the first electromagnet and de-energizing the second electromagnet can only accomplish the stopping of flow. The words "first" and "second" in the above claim are reversed.

8. Claim 21 recites the limitation "said cover" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 28 recites the limitation "said originating source colors" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,862,984 to Chang.

12. Regarding claims 1 and 12-14 Chang discloses a miniature ornamental fountain having an enclosure with a reservoir (20), a pump (21), conduits means (62, 63) to conduct liquid from the pump to a set of laminar nozzles (40), flow control means for controlling flow between the reservoir and the nozzles (61), and where the stream emanating from the nozzles forms an arch (80) and then falls back into the reservoir (via 90). Regarding claims 12-14, Chang ('984) shows (figure 2) multiple laminar nozzles (40).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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14. Claims 26-36 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,862,984 to Chang in view of U.S Patent 5,078,320 to Fuller et al.

Regarding claim 26, 29-34, Chang discloses a miniature ornamental fountain having an enclosure with a reservoir (20), a pump (21), conduits means (62, 63) to conduct liquid from the pump to a set of laminar nozzles (40), flow control means for controlling flow between the reservoir and the nozzles (61), and where the stream emanating from the nozzles forms an arch (80) and then falls back into the reservoir (via 90). Chang does not disclose the use of multiple source lighting for lighting at least two colors. Fuller et al. ('320) teaches the use of lighting in a water display (Col. 6, lines 35-66). As per claim 26, multiple source lighting for lighting an array of colors (112), utilizing bundles of fiber optic cables, means for illuminating the first end of the optic cables, means for combining the cables and means for routing the cables are taught by Fuller et al. ('320). As for claims 27, 29, 30, 31 and 33, in regards to the Fuller et al ('320) discloses the illumination aspect of the invention but does not teach the use of individual colors, aside from the reference to a color wheel. It would have been an obvious matter of design choice to separate the colors of a color wheel, as source colors, since the applicant has not disclosed that individual color sources solves any stated problem or is for any particular purpose other than aesthetics and it appears the invention would perform as equally well with a simple color wheel. It would have been obvious to one skilled in the art at the time the invention was made to have modified the fountain of Chang ('984) wit the fiber-optic lighting system of Fuller et al. to produce an illuminated fountain display visible in low light.

***Allowable Subject Matter***

15. Claims 2, 3, 5, 6, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 35, and 36 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claims 4, and 7-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 5,933,883 to Biancamano, disclosing a pool fountain system

U.S. Patent No. 6,149,070 to Hones, disclosing a waterfall device


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
06/29/2005



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